

**A RESOLUTION**

**04-R -1356**

**BY NATALYN ARCHIBONG**



**A RESOLUTION AUTHORIZING THE MAYOR OR HER DESIGNEE TO ENTER INTO AN AGREEMENT TO ACCEPT THE DONATION OF IMPROVEMENTS TO BESSIE BRANHAM PARK FROM KIRKWOOD NEIGHBORS ORGANIZATION, AND FOR OTHER PURPOSES.**

WHEREAS, Bessie Branham Park is a public park owned and maintained by the City of Atlanta; and

WHEREAS, Kirkwood Neighbors Organization is a private, non-profit organization dedicated to the preservation, restoration and maintenance Bessie Branham Park as a green space and as a cultural and recreational resource which enhances the quality of life for all Atlantans; and

WHEREAS, the construction of a playground in Bessie Branham Park would constitute an improvement to the park grounds and increase the recreational resources in the Kirkwood Historic District; and

WHEREAS, KaBOOM! is a non-profit organization that develops, manages and coordinates community-build playground programs; and

WHEREAS, Kirkwood Neighbors Organization proposes to enter into a written agreement with KaBOOM! as a Community Partner for services to plan, design and construct a community-built playground in Bessie Branham Park (the "Project"); and

WHEREAS, the value of the contribution to the Project by Kirkwood Neighbors Organization is \$20,000; and

WHEREAS, Kirkwood Neighbors Organization wishes to donate to the City of Atlanta the resulting improvement to Bessie Branham Park,

**NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF ATLANTA, GEORGIA, as follows:**

SECTION 1: That the Mayor is hereby authorized to enter into an agreement to accept on behalf of the City of Atlanta the donation of improvements to Bessie Branham Park in the form of a community-build playground from Kirkwood Neighbors Organization as set forth in substantial form as Attachment A.

**AGREEMENT  
BETWEEN  
THE CITY OF ATLANTA  
AND  
THE KIRKWOOD NEIGHBORS' ORGANIZATION**

THIS AGREEMENT REGARDING THE DONATION OF A COMMUNITY-BUILD PLAYGROUND AND THE EQUIPMENT THEREON, made as of the \_\_\_\_\_ day of \_\_\_\_\_, 2004 by and between the City of Atlanta, a municipal corporation and political subdivision created pursuant to the laws of the State of Georgia, and the KIRKWOOD NEIGHBORS' ORGANIZATION, a private, non-profit corporation organized and existing under the laws of the State of Georgia.

**WITNESSETH THAT:**

**WHEREAS**, Bessie Branham Park is a public park owned and maintained by the City of Atlanta; and

**WHEREAS**, Kirkwood Neighbors Organization is a private, non-profit organization dedicated, in part, to the preservation, restoration and maintenance Bessie Branham Park as a green space and as a cultural and recreational resource which enhances the quality of life for all Atlantans; and

**WHEREAS**, Kirkwood Neighbors Organization has entered into a written agreement with KaBOOM!, a non-profit organization that develops, manages and coordinates community-build playground programs, for services to plan, design and construct a community-build playground in Bessie Branham Park; and

**WHEREAS**, Kirkwood Neighbors Organization wishes to donate to the City of Atlanta playground equipment and other improvements to Bessie Branham Park valued at approximately \$140,000,

**NOW, THEREFORE**, for good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby acknowledged, the City and the Kirkwood Neighbors' Organization, intending to be legally bound, do hereby covenant and agree as follows:

**I. OBJECTIVE**

The City does hereby accept and Kirkwood Neighbors' Organization does hereby donate a community-build playground to be constructed in Bessie Branham Park pursuant to a separate written agreement between Kirkwood Neighbors' Organization and KaBOOM!. (Exhibit 1).

## **Attachment A**

### **II: FORCE MAJEURE**

A. If the community-build playground project to be completed by Kirkwood Neighbors Organization and KaBOOM! is prevented, suspended, or postponed by reason of any extended illness, fire, casualty, heightened state of emergency, act of terrorism, lockout, labor strike, riot, war, Act of God, or by ordinance, law, order or decree of any legally constituted authority (hereinafter, "*Force Majeure Event*"), then during such Force Majeure Event this Agreement may, at the option of the City, be suspended during the continuance of such Force Majeure Event. In the event that any such suspension described above continues for a period or aggregate of periods of forty-five (45) days, the parties may terminate this Agreement by mutual written consent.

### **III. INDEMNIFICATION**

A. Kirkwood Neighbors' Organization shall indemnify the City and hold it harmless against any losses, claims, damages or liabilities to which the City may become subject to, arising in any manner out of or in connection with acts taken or omitted to be taken (including any untrue statements made or statements omitted to be made) by Kirkwood Neighbors' Organization or otherwise arising out of or in connection with the construction or installation of the community-build playground project hereunder unless, in a final adjudication, it is determined that such losses, claims, damages, or liabilities arose out of the gross negligence or gross misconduct of the City, to the extent that the City's governmental immunity or the provisions of O.C.G.A. Section 51-3-20 et seq do not apply.

B. Notwithstanding anything to the contrary contained herein, neither party shall be liable for consequential, incidental, punitive, special, exemplary or indirect damages, or lost profits in connection with claims made by either party or any other third party, in connection with this Agreement regardless of the form, or whether in contract or tort.

### **IV. ASSIGNMENT OF AGREEMENT**

This Agreement, the obligations of Kirkwood Neighbors' Organization hereunder, and the obligations of the City hereunder shall not be assignable by Kirkwood Neighbors' Organization without the written consent of the City. Nothing in this Agreement shall confer or be construed as conferring any rights or obligations upon any person or other entity not a direct party to this Agreement.

### **V. MISCELLANEOUS**

A. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Georgia without regard to the conflict of law principles thereof. The parties hereby agree to submit to the jurisdiction of the courts of the State of Georgia for the purpose of resolving any dispute arising out of or resulting from this Agreement.

B. Notices. All notices and statements required hereunder shall be in writing and delivered, certified or registered first class mail (postage prepaid and return receipt requested), or via overnight delivery to the addresses set forth below unless notification of a change of address is given in writing. Notice may be sent via confirmed facsimile transmission but a hard copy must also be mailed. Notice shall be deemed given when mailed and faxed as follows:

## Attachment A

If to Kirkwood  
Neighbors'

Organization: Douglas L. Wood,  
Kirkwood Neighbors' Organization  
PO Box 170304  
Atlanta, Georgia 30317

If to City:

Ms. Dianne Harnell Cohen, Commissioner  
City of Atlanta Department of Parks, Recreation, and Cultural Affairs  
City Hall East, 875 Ponce de Leon Avenue, N.E., 8th floor  
Atlanta, Georgia 30308

and

Ms. Stacey Y. Abrams, Deputy City Attorney  
Department of Law  
68 Mitchell Street  
City Hall Towers, Suite 4100  
Atlanta, Georgia 30303  
Facsimile Number: (404) 658-6894

C. No Waiver. The waiver of any breach of this Agreement either by the City or Kirkwood Neighbors' Organization of any rights, remedies or defenses is not intended and will not be deemed a waiver of any additional rights, remedies or defenses to which such party would be entitled at law or in equity as to such breach. In addition, no waiver by either party of a breach of any term or provision of this Agreement will be construed to be a waiver of any proceeding or succeeding breach of the same or any other term or provision.

D. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one instrument and may be delivered via electronic transmission with the same force and effect as if it were executed and delivered by the parties simultaneously in the presence of one another.

E. Headings. The headings to the Sections of this Agreement are for convenience only and shall not be considered a part of this Agreement or be used in determining the intent of the parties.

F. Severability. If any provision of this Agreement is found to be unenforceable, the remainder shall be enforced as fully as possible and the unenforceable provision shall be deemed modified to the limited extent required to permit its enforcement in a manner most closely approximating the intention of the parties as expressed herein.

G. Survival. The provisions of Section III (Indemnification) shall survive the expiration or early termination of this Agreement.

**Attachment A**

H. Modifications or Extensions. Except as otherwise provided herein, this Agreement may only be modified or extended by a written agreement signed by both parties.

I. Entire Agreement. This Agreement constitutes the entire understanding between the parties with respect to the subject matter hereof, supersedes all previous written or verbal agreements between the parties, including but not limited to all representations, warranties, statements, correspondence, and understandings previously made by Kirkwood Neighbors Organization or the City with respect to the subject matter of this Agreement.

\* \* \* \*

{Signatures on Following Page}

**IN WITNESS WHEREOF**, the City and Kirkwood Neighbors Organization (CDC) have caused this Agreement to be executed as of \_\_\_\_\_, 2003.

**Attachment A**

**Kirkwood Neighbors Organization**

**The City of Atlanta**

By: \_\_\_\_\_

By: \_\_\_\_\_

Doug Wood  
Kirkwood Neighbors Organization

Mayor Shirley Franklin  
The City of Atlanta